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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,188	09/11/2003	David E. Mayhew	101340-334-NP	5820
7590	06/11/2007		EXAMINER	
Robert Frame Nields & Lemack 176 E. Main Street Suite 7 Westboro, MA 01581			FOUD, HICHAM B	
			ART UNIT	PAPER NUMBER
			2616	
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			06/11/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/660,188	MAYHEW ET AL.
Examiner	Art Unit	
Hicham B. Foud	2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 11 September 2003.  
 2a) This action is FINAL.                                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-12 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-12 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 11 September 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

## DETAILED ACTION

### *Specification*

1. The abstract of the disclosure is objected to because it is too short and does not give an exact description of the invention. Correction is required. See MPEP § 608.01(b).

Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following:

- (1) if a machine or apparatus, its organization and operation;
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;
- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

***Claim Objections***

3. Claims 2, 4 and 6-10 are objected to because of the following informalities:

For claim 2, it ends with semicolon instead of a period.

Claims 4 and 6-10 contain abbreviation of terms that need to be written in full such as PID, CRC and EUI.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is stating that a switch fabric is creating a packet, and then at the end of the claim is stating that a first node is creating and transmitting a packet header to a second node. It is not known what is the relationship between the packet and the packet header and the switch fabric network with the two nodes. Also, it is not known if the packet field data is a part of the header or not because the limitation "a packet header using said protocol encapsulation interface identifier and packet field data" does not determine if the packet field data is part of the packet header or not. Similar problems occur in claim 5.

For claims 2-4 and 6-10 are rejected because they depend on the rejected claim.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 11 and 12 are rejected under 35 U.S.C. 101 because it does not fall within one of the four categories patentable subject matter of 35 U.S.C § 101 (process, machine, manufacture, or composition of matter). The recited claim preempts an Abstract Idea (a data structure), which is a subject matter that is not a practical application or use of an idea, a law of nature or a natural phenomenon, and so is not patentable. See, e.g., *Rubber-Tip Pencil Co. v. Howard*, 87 U.S. (20 Wall.) 498, 507 (1874) ("idea of itself is not patentable, but a new device by which it may be made practically useful is"); *Mackay Radio & Telegraph Co. v. Radio Corp. of America*, 306 U.S. 86, 94, 40 USPQ 199, 202 (1939) ("While a scientific truth, or the mathematical expression of it, is not patentable invention, a novel and useful structure created with the aid of knowledge of scientific truth may be."); *Warmerdam*, 33 F.3d at 1360, 31 USPQ2d at 1759 ("steps of 'locating' a medial axis, and 'creating' a bubble hierarchy . . . describe nothing more than the manipulation of basic mathematical constructs, the paradigmatic 'abstract idea'"). See *Le Roy v. Tatham*, 55 U.S. (14 How.) 156, 175 (1852) ("A principle, in the abstract, is a fundamental truth; an original cause; a motive; these cannot be patented, as no one can claim in either of them an exclusive right."); *Funk Bros. Seed Co. v. Kalo Inoculant Co.*, 333 U.S. 127, 132, 76 USPQ 280, 282 (1948) (combination of six species of bacteria held to be nonstatutory subject matter).

Accordingly, the subject matter of claims 11 and 12 are held to be nonstatutory subject matter.

6. Claims 11 and 12 claim a " computer readable medium having stored thereon a data structure." The claimed subject matter is nonstatutory functional descriptive material as stated in the MPEP 2106 Patentable Subject Matter. It is suggested that the applicant rewrite claims 11 and 12 in terms of " a computer readable medium, stored with, embodied with or encoded with a computer program or computer executable instructions."

**Note**

7. In claims 1 and 5, note that claim scope is not limited by claim language that suggests or makes optional but does not require steps to be performed, or by claim language that does not limit a claim to a particular structure, such as by using the term "**adapted to** ". Therefore, claim language following this phrase will not be considered. It is suggested that Applicant remove this term.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Engel et al (6,115,393), hereinafter referred to as Engel.

For claims 1 and 5, Engel discloses a switch fabric network for creating a packet encapsulating a protocol comprising: a protocol encapsulation interface identifier (see column 8 lines 54-55; a protocol field for identifying the protocol); packet field data (see 51-53; the IP header includes a type field, length field; inherently those fields are field data); a packet header using said protocol encapsulation interface identifier and packet field data (see column 8 lines 51-59; the IP header); and a first node adapted to create said packet header and to transmit said packet header to a second node (see column 8 line 50; Like the Ethernet packet, the PDU for the IP layer includes an IP header and a DATA field; inherently like the Ethernet packet, the PDU is created and transmitted from a node to another node).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4 and 6-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Engel et al (6,115,393), hereinafter referred to as Engel.

For claims 2-4 and 6-12, Engel discloses all the subject matter with exception wherein the packet field data comprises a credit length, a bit count, a turn pool, an operation, a PID index, an MTU, an EUI and other claimed field data. However, it is obvious to include or add any field data to the packet data field especially that the packet data field contains reserved bits that are not used and left for the purpose of

adding any needed data field that allows adding new features to the packet. Thus, it would have been obvious to the one skill in the art at the time of the invention to add new features to the packet by using those reserved bits that are left empty such as CRC bit for the purpose of adding new functions to the packet like the error detection and to have an efficient system.

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hicham B. Foud whose telephone number is 571-270-1463. The examiner can normally be reached on Monday - Thursday 10-3 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau T. Nguyen can be reached on 571-272-3126. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

HF

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